Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Deposit Regulations")

Chamber Ref: FTS/HPC/PR/26/0211

Re: Property at 10 Ramage Square, Edinburgh, EH6 6FD ("the Property")

Parties:

Mrs Azeezat Raheem, Mr Wasiu Raheem, 8 Heather Way, Mayfield, Dalkeith, EH22 5DF ("the Applicant")

Harbour Lettings Ltd, c/o Harbour Lettings Ltd, 108 Constitution Street, Edinburgh, EH6 6AZ ("the Respondent")

Tribunal Members:

Fiona Stephen (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined to grant an order for payment in the sum of Four Hundred Pounds (£400.00) Sterling

Background

1. By application dated 15 January 2026 the Applicants seek an award under the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Deposit Regulations") in respect of an alleged failure by the Respondent to comply with those regulations.

2. The Application was accepted by the Tribunal on 19 January 2026 and referred for determination by the Tribunal.

3. The Respondent was served with the papers in this case by Sheriff Officers on 14 May 2026 conform to Execution of Service of the same date. The parties were aware that a Case Management Discussion ("CMD") was fixed for 17 June 2026 at 2pm by teleconference call. The Respondent was

required to lodge any written representations with the Tribunal by 3 June 2026.

4. Written representations were lodged by the Respondent on 3 June 2026 and copied over to the Applicants. On the same date, the Respondent asked for the Case Management Discussion ("CMD") to be postponed on the ground that the Respondent's Manager, Mr Hastie would be overseas on that date and would prefer to be present. The Tribunal noted that the Lettings Officer, Mr Galloway would be available to attend the CMD.

5. The Tribunal considered the request for a postponement. It noted that the Respondent had provided a full explanation concerning the circumstances of the lodging of the deposit in the written representations and that Mr Galloway, Lettings Officer was available to appear at the CMD. The Tribunal refused the request having regard to these factors and by reference to the overriding objective of avoiding delay. The Tribunal did not consider sufficient cause had been shown for a postponement in the circumstances in terms of Rule 28 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the procedure rules"). The parties were informed accordingly.

6. The Tribunal had before it:

   (i) The Application Form G;
   (ii) The Tenancy Agreement between the Applicants and the Respondent;
   (iii) Confirmation from the Scottish Landlord Register that the Respondent is a registered Landlord for the Property;
   (iv) Confirmation that the deposit was lodged with SafeDepositsScotland on 29 May 2024; and
   (v) Case Papers

Case Management Discussion

7. The CMD took place on 17 June 2026 at 2pm by teleconference call. Mrs Azeezat Raheem attended on behalf of herself and Mr Wasiu Raheem and Mr Galloway attended on behalf of the Respondent along with a collaegue, Mr Wilson who was observing for training purposes.

8. The Tribunal explained the purpose of the CMD and the powers of the Tribunal to determine matters. The Tribunal asked various questions of the parties with regard to the application.

9. The Tribunal explained to the parties the order which could be made in terms of the Deposit Regulations and the requirement that an award must be made if the Tribunal finds that there has been a breach of the Regulations.

10. It was accepted by both parties that the Applicants had entered into a Private Residential Tenancy with the Respondent in relation to the Property for the period from 12 December 2023 and that the tenancy ended on 26 December 2025. The Applicants had paid a deposit of £806.60. The Tribunal noted from the Respondent's written representations that it was accepted that the deposit had not been lodged within the statutorily required period of 30 working days from commencement of the tenancy in terms of the Deposit Regulations. It should have been lodged on 26 January 2024 but had not been lodged until 29 May 2024, a period of just over 4 months.

11. The Tribunal asked the Respondent's representative if he had anything to add to what was within the written representations already lodged. Mr Galloway stated that at the time this tenancy was arranged, it was a very busy time for the Respondent who were dealing with a large new development. He was clear to point out that this was not an excuse. It was accepted that an error had been made as a result of an adjustment made to the IT system. A payment had been recorded out of the tenant's account and was ready to go to SafeDepositsScotland but due to a mix-up with the finance team the payment was not sent. The error was not picked up until 29 May 2024. The tenant's deposit had been kept in an account which did not accrue interest so there was no benefit received by the Respondent as a result of the error. As soon as the error was discovered, the Respondent wrote to the Applicants to tell them and confirm that the deposit had been lodged.

12. The Respondent has since invested in a new IT system with new software and so this type of error should not happen again. This was the first time that Mr Galloway was aware of such an error being made and he has worked with the Respondent for three and a half years. In addition to the new IT system, a new member of staff has now been taken on to deal with administrative tasks increasing the staffing levels from three to four.

13. The Tribunal had noted from the Respondent's written representations that when the error was discovered the Respondent's Mr Hastie wrote to the Applicants on the same day (29 May 2024). He explained what had happened and told them their deposit was being sent to SafeDepositsScotland that day and they would get a notification from them. He also apologised that this error had been made.

14. Mrs Raheem confirmed that she and her husband had received the email from the Respondent on 29 May 2024 explaining that due to human error the deposit had not been lodged and apologising for this. They received an email from SafeDepositsScotland on 31 May 2024 to confirm the deposit had been lodged. The Applicant had no comment to make about the Respondent's written representations. She considered the Respondent's comments about what happened after the end of the tenancy concerning the condition of the property were irrelevant to today's proceedings. Mrs Raheem confirmed that the deposit was returned to the Respondent by SafeDepositsScotland. Mrs Raheem stated that she was pleased to note that the Respondent has put a

better system in place, but she could not turn a blind eye to the fact that the deposit was not protected for 4 months.

Findings in Fact

15. The parties entered into a private residential tenancy in respect of the Property that commenced on 12 December 2023 and ended on 26 December 2025.

16. The monthly rent payable in the tenancy was £806.60.

17. Clause 11 of the tenancy agreement provided that a security deposit of £806.60 was payable by the Applicants at the start date of the tenancy and that the Respondent would lodge this with SafeDepositsScotland.

18. The Applicants paid the deposit.

19. The deposit should have been lodged with SafeDepositsScotland by the Respondent by 26 January 2024.

20. The deposit was not lodged and protected by SafeDepositsScotland until 29 May 2024.

21. The deposit was lodged late by just over 4 months.

22. The Applicants' deposit of £806.60 was returned to the Respondent after the end of the tenancy by SafeDepositsScotland.

23. The Respondent admits that the deposit was lodged outwith the statutory time limit as required by the Deposit Regulations.

24. The delay in lodging the deposit arose at a time when the Respondent was going through a very busy period with a new development.

25. As a result of an administrative error, the deposit was not sent to SafeDepositsScotland within the statutory time limit of 30 working days from the start of the tenancy.

26. The error was discovered on 29 May 2024.

27. On 29 May 2024 the Respondent wrote to the Applicants to tell them of the error, apologised and reassured them that the deposit was being sent to SafeDepositsScotland that day.

28. The Applicants received confirmation of receipt of the deposit from SafeDepositsScotland on 31 May 2024.

29. The Respondent has since invested in a new IT system and new software to prevent similar errors occurring in the future.

Reasons for Decision

30. The Tribunal was satisfied that it was able to make a determination and that it was not contrary to parties' interest to do so at the CMD without the need for a hearing all in terms of Rules 17 and 18 of the procedure rules.

31. The application relates to the failure of the Respondent to place a tenancy deposit within an approved tenancy deposit scheme timeously. Landlords have been required since the introduction of the Deposit Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy.

32. Regulation 3 of the 2011 Regulations provides inter alia:

> *(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—*
>
> > *(a) pay the deposit to the scheme administrator of an approved scheme; and*
> > *(b) provide the tenant with the information required under regulation 42.*

33. Regulation 9 of the 2011 Regulations provides:

> *(i) A tenant who has paid a tenancy deposit may apply to the [First-tier Tribunal] for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.*
> *(ii) An application under paragraph (1) must be made [...] no later than 3 months after the tenancy has ended.*

34. Regulation 10 of the 2011 Regulations provides inter alia:

> *If satisfied that the landlord did not comply with any duty in regulation 3 the [First-tier Tribunal][1] —*
> > *(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit*;

35. The Respondent admitted that it failed to place the deposit in an appropriate scheme timeously. Accordingly, it has breached Regulation 3 of the 2011 Regulations. The duties are two-fold. There is a requirement to pay the deposit to a scheme administrator and the requirement to provide a Tenant

with specified information regarding the tenancy deposit. The Respondent failed to comply with both duties timeously.

36. The present application has been made timeously in terms of Regulation 9. The Tribunal is required to make an order for payment in terms of Regulation 10. The only matter to be determined by the Tribunal is the amount of the payment.

37. The legal test to be applied in determining an appropriate level of sanction is set out in *Jenson v Fappiano 2015 GWD 04-89* and subsequent case law. Those authorities are reviewed by Sheriff Cruickshank in *Ahmed v Russell 2023 SLT (Tr 33).* He indicates at para [38] that *"Previous cases have referenced various mitigating or aggravating factors which may be considered relevant. It would be impossible to ascribe an exhaustive list. Cases are fact specific and must be determined on such factors as may be present."* At para [39] he states that *"The sanction which is imposed is to mark the gravity of the breach which has occurred. The purpose is not to compensate the tenant"*. The amount awarded should represent a "fair and proportionate sanction when all relevant factors have been appropriately balanced." para [44].

38. The Tribunal also had regard to the decision of the Upper Tribunal in *Rollett v Mackie [2019] UT 45* (also cited as UTS/AP/19/0020) in which Sheriff Ross states at para [13] *"In assessing the level of a penalty charge, the question is one of culpability and the level of culpability requires to reflect that culpability… The finding that a breach was not intentional is...rational on the facts and tends to lessen culpability"* At paragraph [14], he goes on "*Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant or other hypotheticals*".

39. In reaching a determination, the Tribunal took into account that the Respondent is in breach of Regulation 3 of the Deposit Regulations.

40. The Tribunal took into account that the deposit of £806.60 had been left unprotected for just over 4 months from the date it ought to have been lodged, 26 January 2024, which was a reasonably short but not insignificant period of time in comparison to the length of the tenancy of 2 years. The Tribunal gave weight to the fact that the failure to lodge the deposit had not been intentional or deliberate but arose as a result of an administrative error in the Respondent's office. The error was rectified on the same date that it was discovered on 29 May 2024. The Tribunal also gave weight to the fact that the Respondent wrote to the Applicants on the same date that the error was discovered to inform them that the deposit would be lodged with SafeDepositsScotland that day. Since that event, the Respondent has invested in new software to avoid a similar event occurring in the future. In light of all of the facts and circumstances, the Tribunal considered that it would be fair and proportionate to make an order at the lower end of the available scale.

41. The Tribunal determined that the sanction should be £400.00 in the particular facts and circumstances of this case.

Decision

The Tribunal granted an Order for payment of £400.00 in terms of Regulation 10 (a) of the Deposit Regulations.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

[redacted]

Fiona Stephen **19 June 2026**
Legal Member/Chair **Date**